SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No.

EMERSON F. MINNIE, PETITIONER,

vs.

PORT HURON TERMINAL COMPANY AND FIDELITY AND CASUALTY COMPANY OF NEW YORK

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

INDEX.

	Original	Print
Proceedings in Supreme Court of Michigan	1	1
Docket entries	1	1
Proceedings before Department of Labor and Industry	2	1
Notice and application for adjustment of claim	2	1
Plea and answer of defendants	3	2
Order awarding compensation	5	3
Minute entry of submission	7	4
Opinion, Wiest, J.	8	4
Judgment	12	7
Praecipe for transcript of record	13	7
Clerk's certificate (omitted in printing)	15	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 29, 1935.

—5907-C

[fol. 1]

IN SUPREME COURT OF MICHIGAN

37945

E. F. Minnie, Plaintiff,

vs.

Port Huron Terminal Company and Fidelity and Casualty Company of New York, Defendants and Appellants

Appeal from Department of Labor and Industry

Plaintiff's Attorneys: Stewart and Black.

Defendants' Attorney: Leo J. Carrigan.

Docket Entries

1934.

May 10. Application for leave to appeal filed.
" . Application for leave to appeal granted.
June 20. Proof of claim of appeal filed.
Aug. 30. Note of argument filed.
Oct. 4. Submitted on briefs.
Dec. 10. Reversed, costs.
" 17. Praecipe for record filed.
" 28. Remittitur to Department.

[fol. 2] Before Department of Labor and Industry, Lansing, Michigan

State of Michigan,
County of St. Clair, ss:

E. F. Minnie, 1627 Jay Street, Port Huron, Michigan, Plaintiff,

v.

Port Huron Terminal Company, Port Huron, Michigan, Defendant

Notice and Application for Adjustment of Claim

Emerson F. Minnie, the above named plaintiff, hereby gives notice to said Department of Labor and Industry that

the above named parties have failed to reach an agreement in regard to compensation under Act No. 10 of the Public Acts, First Extra Session of 1912, and hereby makes application to said Department of Labor and Industry for the adjustment of such compensation between said parties, and the adjudication and determination of the same.

Said plaintiff further shows that the accident upon which claim for compensation is based in this matter occurred on the 11th day of July, 1932, at the town of Port Huron, county of St. Clair and State of Michigan, and resulted in 4 fractures—back injury.

The post office address of the above named plaintiff is 1627 Jay Street, Port Huron, and the post office address [fol. 3] of the defendant is as follows: Port Huron.

The above named plaintiff prays for the following relief in the premises, viz.: Compensation in accordance with law.

Your plaintiff therefore prays that your honorable commission set this application for hearing before a commissioner or deputy commissioner so that your plaintiff may present proof in support of his claim and that he be granted such relief as he is entitled to under the Workmen's Compensation Law of Michigan.

Dated at Port Huron, this 15th day of September, 1933.

(Signed) Emerson F. Minnie, 1627 Jay Street, Port Huron, Michigan, Plaintiff.

(Printed instructions omitted)

Before Department of Labor and Industry, Lansing, Michigan

[Title omitted]

PLEA AND ANSWER OF DEFENDANTS

Now come the above named defendants, by Leo J. Carrigan, their attorney, and demand a hearing and trial of the matters set forth in plaintiff's notice and application for adjustment of claim.

[fol. 4] If the plaintiff on the trial of said cause introduces any evidence tending to support his alleged claim, these defendants will especially insist in defense:

1. That the injury sustained by the plaintiff, if any, was sustained while the plaintiff was engaged in a maritime employment on the Great Lakes, and therefore the Department of Labor and Industry has no jurisdiction herein.

2. That the injury sustained by the plaintiff, if any, was sustained while the plaintiff was engaged in foreign commerce, and therefore the Department of Labor and Industry has no jurisdiction herein.

Leo J. Carrigan.

Business Address:
2510 Eaton Tower, Detroit, Michigan.

[fol. 5] Before Department of Labor and Industry

E. F. Minnie, Plaintiff,

v.

Port Huron Terminal Company, Fidelity and Casualty Company, Defendants

Order Awarding Compensation

At a session of the Department of Labor and Industry held at its offices in the city of Lansing, Michigan, this 24th day of April, A. D. 1934.

Present: Hon. Claude S. Carney, chairman; Hon. Wm. A. Seegmiller, commissioner; Hon. Eugene P. Berry, commissioner.

This cause having come on to be heard on appeal of the defendants from the award made by the deputy commissioner on December 4, 1933, awarding compensation at the rate of $9.60 per week from July 11, 1933, until the further order of the commission, together with $75.00 for medical care and expenses, and after due consideration of the evidence and the arguments of counsel (the commission having made a finding of facts and law) it appears to this commission that the award made as aforesaid must be affirmed with the modification that compensation shall be paid at the rate of $12.32 per week instead of $9.60 per week;

Therefore it is ordered, adjudged and decreed that the [fol. 6] award of the deputy commissioner, with the modification as aforesaid, be and the same is hereby affirmed.

Department of Labor and Industry. Claude S. Carney, Chairman; Wm. A. Seegmiller, Commissioner; Eugene P. Berry, Commissioner.

EPB:LD.

(Mailed Apr. 24, 1934. Dept. of Labor and Industry.)

[fol. 7] IN SUPREME COURT OF MICHIGAN

[Title omitted]

MINUTE ENTRY OF SUBMISSION—Dec. 4, 1934

This cause coming on to be heard is duly submitted on briefs.

[fol. 8] IN SUPREME COURT OF MICHIGAN

E. F. MINNIE, Plaintiff-Appellee,

vs.

PORT HURON TERMINAL COMPANY ET AL., Defendant-Appellants

Before the entire bench

OPINION—Filed Dec. 10, 1934

WIEST, J.:

Plaintiff was a longshoreman, employed by defendant terminal company in unloading a vessel at Port Huron. While upon the deck of the vessel and about his work he was struck by a swinging hoist, lifting cargo from a hatch, precipitated to the wharf and injured. This is an appeal in the nature of certiorari from an award to plaintiff under the Workmen's Compensation Law.

Defendant contends that the accident was upon navigable water and, therefore, not within the provisions of the compensation law of this state.

The commission found that the injury must have been occasioned by plaintiff's fall upon the wharf, and held that the injury consummated, in whole or in part, upon the land

brought the case within the compensation act, even though [fol. 9] the injuries would not have been received except for the direct force applied upon plaintiff's person while on the deck of the vessel.

A longshoreman, while employed in unloading a vessel lying in navigable water, is engaged in work of a maritime nature under a maritime contract. Peters v. Veasay, 251 U. S. 121. The work of the longshoreman was upon the vessel and the force was applied to his person there with serious consequences when he was knocked from the deck of the vessel to the wharf. The judicial power of the United States extends to all cases of admiralty and maritime jurisdiction. Southern Pacific Co. v. Jensen, 244 U. S. 205. The accident was on the deck of the vessel and the injury by fall upon the wharf. The place of the accident identifies the applicable law.

We held in Cooke v. Holland Furnace Co., 200 Mich. 192, (quoting syllabus):

"While the words 'accident' and 'injury' are not synonymous, the accident produced the injury, and in point of time they are concurrent."

There can be no award of compensation without an accident and consequent injury. The unlooked for mishap or untoward event was upon the deck of the vessel and constituted an accident, and cannot be separated from the fall to the wharf and injuries there sustained for, under our compensation act, the award must be for "accidental injuries." Savage v. City of Pontiac, 214 Mich. 626. We cannot separate the cause from the consequences; the origin from the immediate end; the accident from the injuries. To do so would result in a finding of an accident while engaged in work of a maritime nature and, therefore, not within the [fol. 10] state act, and then another finding that the injuries, occasioned thereby, are to be distinguished from the proximate cause thereof and, therefore, not of Federal cognizance.

The Longshoremen's — Harbor Workers' Compensation Act (Act of March 4, 1927, c. 509, 44 Stat. 1424; U. S. C. Tit. 33, secs. 901-950), must be considered. Under that act:

" 'Injury,' within the statute, 'means accidental injury,' or death arising out of and in the course of employment,' and the term 'employer' means one any of whose employees

are employed in maritime employment, in whole or in part,' upon such navigable waters."

Crowell v. Benson, 285 U. S. 22, 38.

The Senate Judiciary Committee, in reporting the measure, stated in part:

"If longshoremen could avail themselves of the benefits of State compensation laws, there would be no occasion for this legislation; but, unfortunately, they are excluded from these laws by reason of the character of their employment; and they are not only excluded but the Supreme Court has more than once held that Federal legislation can not, constitutionally, be enacted that will apply State laws to this occupation. (Southern Pacific Co. v. Jensen, 244 U. S. 205; Knickerbocker Ice Co. v. Stewart, 253 U. S. 149; Washington v. Dawson & Co., 264 U. S. 219."

Senate Report No. 973, 69th Cong., 1st sess., p. 16, cited in footnote to the above case.

In Smith & Son v. Taylor, 276 U. S. 179, a longshoreman was standing on a stage which rested solely upon the wharf and projected a few feet over the water to one side of the vessel and, while working there, a sling carrying a load, struck the workman and knocked him off the stage into the water, where sometime later he was found dead. The court stated:

[fol. 11] "Deceased was engaged in maritime work under a maritime contract. If the cause of action arose upon the river, the rights of the parties are controlled by maritime law, the case is within the admiralty and maritime jurisdiction, and the application of the Louisiana compensation law violated sec. 2 of Art. 3 (U. S. Constitution). But, if the cause of action arose upon the land, the state law is applicable. * * * The blow by the sling was what gave rise to the cause of action. It was given and took effect while deceased was upon the land. It was the sole, immediate and proximate cause of his death."

In the case at bar "the sole, immediate and proximate cause" was upon the deck of the vessel while plaintiff was engaged in work of a maritime nature; the blow there received took effect while plaintiff was upon the vessel and gave rise to a cause of action under Federal law.

We hold that, a longshoreman, on the deck of a vessel of foreign registry, lying in navigable water, while at work unloading from a hatch and struck by a swinging crane or hoist, carrying a load from the hatch, and knocked to the wharf and injured, is engaged in work of a maritime nature, under a maritime contract, and cannot have an award of compensation under the Workmen's Compensation Act of the state. Federal law controls.

The award is vacated, with costs, to defendant.

Signed: Howard Wiest, George E. Bushnell, Edward M. Sharpe, Henry M. Butzel, Louis H. Fead, William W. Potter, Nelson Sharpe, Walter H. North.

[File endorsement omitted.]

[fol. 12] IN SUPREME COURT OF MICHIGAN

37945

E. F. MINNIE, Plaintiff

vs.

PORT HURON TERMINAL COMPANY, AND FIDELITY AND CASUALTY COMPANY OF NEW YORK, Defendants and Appellants

JUDGMENT—Dec. 10, 1934

This matter having been brought to this Court by appeal from an order of the Department of Labor and Industry, and having been argued by counsel, and due consideration thereof having been had by the Court, and it appearing to the Court that in the making of said order in said Department there is Manifest Error, Therefore it is ordered and adjudged that the order of said Department of Labor and Industry, appealed from, be and the same is hereby reversed and vacated, with costs to defendants.

[fol. 13] IN SUPREME COURT OF MICHIGAN

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD

To Jay Mertz, Clerk of the Supreme Court of Michigan:

Please prepare, under your hand and the seal of said Court, a certified transcript of the record in the above en-

titled cause for filing in the Supreme Court of the United States, containing the following items thereof:

1. Notice and application for adjustment of claim. Pages 8 and 9 of printed record.
2. Plea and answer of defendants. Pages 9 and 10 of same record.
3. Order awarding compensation. Pages 65 and 66 of same record.
4. Opinion of Michigan Supreme Court.
5. Judgment of Michigan Supreme Court.

Yours, etc., Stewart & Black, Attorneys for Plaintiff and Appellee. Business address, 408-9 First National Bank Building, Port Huron, Michigan.

Dated: December 15, 1934.

[fol. 14] State of Michigan,
County of Ingham, ss:

Eugene F. Black, being first duly sworn, deposes and says that on the 16th day of December, 1934, at Port Huron, Michigan, he deposited in the United States Post Office in said city an envelope plainly addressed to Leo J. Carrigan, Attorney and Counselor, 2510 Eaton Tower, Detroit, Michigan, which envelope contained a true and correct copy of the within and attached Praecipe For Record and upon which envelope were affixed United States postage stamps sufficient to fully prepay postage thereon.

Deponent further says that the above specified address is at this date and has been for some time past the business address of said Leo J. Carrigan, who is the attorney of record for the within named appellants.

Eugene F. Black.

Subscribed and sworn to before me this 17th day of December, 1934.

Hugh Carpenter, Deputy Clerk, Supreme Court of Michigan.

[fol. 15] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 11, 1935

The petition herein for a writ of certiorari to the Supreme Court of the State of Michigan is granted, and the case is assigned for argument immediately following the hearing of No. 696.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

INDEX.

Subject Index:

	Page
Petition for writ of certiorari	1
Summary statement of the matter involved	1
Reasons relied on for allowance of writ	3
Prayer for writ	3
Brief in support of petition	5
Opinion of court below	5
Jurisdiction	5
Statement of the case	7
Specification of errors	7
Argument:	
By express finding of the Michigan Supreme Court petitioner's injuries were sustained on a wharf, an extension of the land, and his remedy accordingly does not lie within the jurisdiction of the maritime	7
A. Discussion of opinion of Michigan Supreme Court	7
B. Discussion of authorities supporting merits of petitioner's application for writ of certiorari	12
Conclusion	17

Table of Cases Cited.

Cooke v. Holland Furnace Co., 200 Mich. 192	7
Crowell v. Benson, 285 U. S. 22, 76 L. Ed. 598	9, 16
Gordon v. Drake, 193 Mich. 70	13
Grant Smith-Porter Ship Co. v. Rhode, 257 U. S. 469, 66 L. Ed. 321	6
Knickerbocker Ice Co. v. Stewart, 253 U. S. 149, 64 L. Ed. 834	6
L'Hote v. Crowell, 286 U. S. 528, 76 L. Ed. 1270	6, 15
L'Hote v. Crowell, 54 F. (2d) 212	15
Nogueira v. New York, N. H. & H. R. Co., 281 U. S. 134, 74 L. Ed. 759	13
Plymouth, The, 3 Wall. 20, 18 L. Ed. 125	9
Roach v. Kelsey Wheel Co., 200 Mich. 303	10
Smith & Son v. Taylor, 276 U. S. 179, 72 L. Ed. 521	9
Southern Pacific Co. v. Jensen, 244 U. S. 205, 61 L. Ed. 1086	6, 9
State Industrial Commission v. Nordenholt Corp., 259 U. S. 263, 66 L. Ed. 933	6
Strabo, The, 98 Fed. 998	14

Other Authorities Cited.

Judicial Code, Sec. 237, as amended by Act of February 13, 1925 (43 Stat. 937)	5
Longshoremen's and Harbor Workers' Compensation Act (U. S. Code, Title 33, sections 901-950)	8
Longshoremen's and Harbor Workers' Compensation Act (U. S. Code, Title 33, section 903)	8
1 R. C. L. 417	13

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 678

EMERSON F. MINNIE,

Petitioner,

vs.

PORT HURON TERMINAL COMPANY AND FIDELITY AND CASUALTY COMPANY OF NEW YORK.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of Emerson F. Minnie respectfully shows unto this Honorable Court:

A.

Summary Statement of Matter Involved.

This action was originally brought to recover compensation under the Michigan Workmen's Compensation Act for injuries sustained by petitioner (plaintiff below) under the following circumstances.

On the dates hereinafter specified respondent Port Huron Terminal Company owned and operated a dock and warehouse on the west bank of the St. Clair River at Port Huron,

Michigan. On July 10 and 11, 1933, the steamship "Laurendoc" was moored at the mentioned dock discharging a cargo of baled paper. Petitioner was then assisting in the discharge of the cargo within the employ and direction of respondent Terminal Company. Discharge of the cargo was accomplished by means of hoists on the vessel which lifted the baled paper in slings from the hatches. While petitioner was standing on the vessel's deck signaling to one of the hoist operators a sling of bales swinging from one of the hoists struck petitioner and precipitated him from the deck to the dock below, where he was injured.

Petitioner seasonably filed claim against respondents for compensation under the Michigan Workmen's Compensation Act, respondent Fidelity and Casualty Company of New York being respondent Terminal Company's insurer under said Compensation Act. Respondents specially pleaded in answer to said claim that petitioner's injuries were sustained while petitioner was engaged in maritime employment and that the Michigan Department of Labor and Industry, which controls and applies the Michigan Workmen's Compensation Act, was accordingly without jurisdiction to grant petitioner compensation under said Act. This defense was not sustained by the Department and respondents appealed from the Department's ruling to the Supreme Court of Michigan. The latter court sustained the defense so pleaded, denied compensation to petitioner on the ground that his remedy was exclusively within admiralty or maritime jurisdiction, and entered judgment accordingly.

For the purpose of having such judgment reviewed by this Court petitioner accepts the finding or statement of facts of the Michigan Supreme Court, which is as follows:

> "Plaintiff was a longshoreman, employed by defendant terminal company in unloading a vessel at Port Huron. While upon the deck of the vessel and

about his work he was struck by a swinging hoist, lifting cargo from a hatch, precipitated to the wharf and injured. * * * The accident was on the deck of the vessel and the injury by fall upon the wharf."

B.

Reasons Relied on for Allowance of Writ.

I. The judgment of the Michigan Supreme Court is an inaccurate application of admiralty or maritime jurisdiction as declared and defined by applicable decisions of this Court.

II. The Michigan Supreme Court has, by its said judgment, inaccurately determined and decided a Federal question of substance in a way not in accord with applicable decisions of this Court, and has thereby determined that petitioner has rights within admiralty or maritime jurisdiction which he actually does not have and never possessed.

III. Rights and privileges were specially set up and claimed by respondents in this case under the Constitution and Laws of the United States as same relate to admiralty or maritime jurisdiction, and these alleged rights and privileges were inaccurately sustained and adjudged in favor of respondents.

Wherefore your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of Michigan, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, the necessary transcript of the record and proceedings in the case numbered and entitled on its docket No. 37945, E. F. Minnie, Plaintiff and Appellee, *v.* Port Huron Terminal Company and Fidelity and Casualty Company of New York, Defendants and Appel-

lants, and that the said judgment of the Supreme Court of the State of Michigan may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court shall seem meet and just.

And your petitioner will ever pray.

JESSE P. WALCOTT,
Counsel for Petitioner.

Business address: 1222 House Office Building, Washington, D. C.

SHIRLEY STEWART,
EUGENE F. BLACK,
Counsel for Petitioner.

Business address: 408-9 First National Bank Bldg., Port Huron, Michigan.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 678

EMERSON F. MINNIE,

Petitioner,

vs.

PORT HURON TERMINAL COMPANY AND FIDELITY AND CASUALTY COMPANY OF NEW YORK.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinion of Court Below.

The opinion of the Supreme Court of the State of Michigan is reported in 269 Michigan Reports, page 295, and it is set forth in the record which accompanies this petition and brief on pages 4-7.

II.

Jurisdiction.

1. Judicial Code, Section 237, as amended by Act of February 13, 1925, 43 Stat. 937.

2. The date of the judgment to be reviewed is December 10, 1934 (R. 7).

3. Petitioner invokes the jurisdiction of this Court which arises under subsection (b) of said section 237, and says that the question of whether his remedy exists exclusively under maritime or admiralty jurisdiction was presented as an affirmative defense by respondents (defendants below), not only in the trial tribunal (R. 2-3), but in the Supreme Court of Michigan (R. 4). This question was squarely decided in favor of respondents' contention by the Supreme Court of Michigan and, claiming his right to immunity from improper construction of that portion of the Constitution and Laws of the United States which relates to admiralty jurisdiction, petitioner submits that the issue so decided is a Federal question reviewable by this Court under the following authorities:

Grant Smith-Porter Ship Company v. *Rhode*, 257 U. S. 469, 66 L. Ed. 321.

State Industrial Commission v. *Nordenholt Corp.*, 259 U. S. 263, 66 L. Ed. 933.

Southern Pacific Company v. *Jensen*, 244 U. S. 205, 61 L. Ed. 1086.

Knickerbocker Ice Company v. *Stewart*, 253 U. S. 149, 64 L. Ed. 834.

In addition to the above we submit there is present here a most appealing reason which supports the here invoked jurisdiction. If petitioner were to abide by the present judgment of the Supreme Court of Michigan and proceed under Federal law, he unquestionably would be subjected to the unassailable defense (*L'Hote* v. *Crowell*, 286 U. S. 528; 76 L. Ed. 1270) that his injuries were sustained on land and that he accordingly has no maritime remedy. Thus, without the aid of the here invoked jurisdiction, we believe petitioner will lose all remedy for his injuries.

III.

Statement of the Case.

A full statement of the case appears in the petition for certiorari under heading "A" and, in the interest of brevity, the statement will not be repeated herein.

IV.

Specification of Errors.

1. The Michigan Supreme Court erred in holding that petitioner's injuries were maritime in nature.

2. The Michigan Supreme Court erred in holding that petitioner's remedy in the premises is controlled by Federal Law.

3. The Michigan Supreme Court erred in holding that petitioner, by virtue of such injuries, became possessed of rights under the Longshoremen's and Harbor Workers' Compensation Act.

V.

ARGUMENT.

By express finding of the Michigan Supreme Court petitioner's injuries were sustained on a wharf, an extension of the land, and his remedy accordingly does not lie within the jurisdiction of the maritime.

A.

Discussion of Opinion of Michigan Supreme Court.

The Michigan Supreme Court cites *Cooke* v. *Holland Furnace Co.*, 200 Mich. 192, and quotes the syllabus (which is

prepared by the reporter and not by the court) instead of the opinion. The syllabus says:

> "While the words 'accident' and 'injury' are not synonymous, the accident produced the injury and in point of time they *are* concurrent."

The opinion says:

> "While the words 'accident' and 'injury' are not synonymous, the accident produced the injury and in point of time they *were* concurrent."

Thus it will be seen the court there declared that Cooke's "accident" and "injury" in point of time *were* concurrent, and was not laying down a rule of law that "accident" and "injury" *are* concurrent. The syllabus is accordingly an extremely misleading concept of the opinion. There is no question in the *Cooke* case but that the accident and injury were concurrent; a bolt from an overhead track having fallen, hitting him on the head and fracturing his skull.

The Michigan Supreme Court next says that the Longshoremen's and Harbor Workers' Compensation Act (U. S. Code, Title 33, Sections 901-950) "must be considered", and inferentially suggests that petitioner has ample remedy under that Act. Our answer to this statement is that the Act itself excludes from its operation claims for injuries occurring on land. Sec. 903 of the Act says in part:

> "*Coverage* (a) Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law."

If the Longshoremen's and Harbor Workers' Compensation Act had not so expressly limited its operation to in-

juries occurring upon navigable waters it would have been unconstitutional (*Crowell* v. *Benson*, 285 U. S. 22, 76 L. Ed. 598).

The Michigan Supreme Court lastly cites *Smith & Son* v. *Taylor*, 276 U. S. 179, 72 L. Ed. 521, as authority for the proposition that the place where the cause occurs as distinguished from the place where the injury occurs, identifies the jurisdiction. The *Taylor* case was one where a longshoreman was at work on a portion of a wharf, from which he was knocked to the water, where he was later found dead. We contend for two separate reasons that this case is not an applicable authority here. These reasons, which we shall discuss in order, are:

1. The rule that a cause of action must arise on the water in order to bring it within maritime jurisdiction does not admit of a converse rule as determinative of State jurisdiction.

2. The first or jurisdictional injury in the *Taylor* case was sustained on the land.

1.

We understand the correct rule of law, deducible from *Southern P. Co.* v. *Jensen*, 244 U. S. 205, 61 L. Ed. 1086, is that the States have jurisdiction to grant remedies for injuries sustained at and near the border of the sea excepting injuries which complete a maritime cause of action. This being so, we submit that a maritime cause of action essentially differs, in so far as jurisdiction depends, from a local cause of action. A maritime cause of action, per the *Plymouth*, 3 Wall. 20, 18 L. Ed. 125, "must be complete within the locality upon which the jurisdiction depends—on the high seas or navigable water". On the other hand a cause of action governed by local law need not be complete on the land; it is essential only that the cause of action be

not a maritime one. It is therefore respectfully submitted that authorities which declare state jurisdiction over causes of action based on torts which, though commencing on land result in injury on water, are not authority for the proposition that injuries caused on water but sustained on land are exclusively within maritime jurisdiction.

2.

It is not amiss at this point to allude to Michigan rules of practice which led up to the findings of fact by the Michigan Supreme Court in this case. In *Roach* v. *Kelsey Wheel Co.*, 200 Mich. 303, the court quotes in full Rule V of Michigan Department of Labor and Industry, which rule requires written notice and proof of affirmative defenses an employer desires to make against a claim for compensation under the Michigan Compensation Act. Following this rule respondents gave notice of the defense which gives rise to this Federal question, viz:

> "If the plaintiff on the trial of said cause introduces any evidence tending to support his alleged claim, these defendants will especially insist in defense:
>
> "1. That the injury sustained by the plaintiff, if any, was sustained while the plaintiff was engaged in a maritime employment on the Great Lakes, and therefore the Department of Labor and Industry has no jurisdiction herein." (R. 2-3.)

Consequently we may safely observe that respondents, who carried the burden of establishing that petitioner's remedy, if any, was maritime in nature, placed in evidence all available proof which might directly or inferentially tend to establish that petitioner was injured, partially at least, before he came in contact with the wharf, or, using the language of *The Plymouth, supra*, that "the whole, or at least the substantial cause of action, arising out of the

wrong", we "complete within the locality" of the pleaded jurisdiction. Likewise we may safely aver that the Supreme Court of Michigan would have appropriately fortified its opinion by finding or alluding to evidence tending to show that petitioner was injured before he struck the wharf had any such evidence been submitted.

With these considerations in mind we respectfully call attention to the fact that the Michigan Supreme Court, whose findings of fact are here conclusively accepted, found that petitioner's injuries were sustained "by fall upon the wharf", and to the fact that this unequivocal finding effectually dissociates the *Taylor* case. In the latter case it was not found, even inferentially, that Taylor was uninjured before he struck the water. We believe on the other hand it is fairly and legitimately inferable that Taylor was knocked unconscious or at least dazed by the blow received on the land, because men are not usually killed or even injured by merely falling into water. The finding of fact by the lower court (5 La. App. 284) affirmatively shows that Taylor's body after its recovery showed bruises on the face, presumably received from the blow by the sling of soda sacks; affirmatively shows that some of the soda in the sacks that struck him was hard, and affirmatively shows that Taylor did not come up after striking the water. The blow received by Taylor on the land did, therefore, take immediate injurious effect. Furthermore, it was not claimed that Taylor was uninjured before he struck the water, the precise contention of plaintiff in error being as follows (72 L. Ed. 522):

> "It argues that as no claim was made for injuries sustained while deceased was on land and as the suit was solely for death that occurred in the river, the case is exclusively within admiralty jurisdiction."

This case therefore presents one feature which is completely absent from the *Taylor* case, viz., an unequivocal

finding of the exact locality where the jurisdictional injury occurred. Such finding is respectfully designated by petitioner as decisively distinguishing the *Taylor* case from the instant case.

B.

Discussion of Authorities Supporting Merits of Petitioner's Application for Writ of Certiorari.

We believe the leading and universally followed authority applicable to this question is *The Plymouth, supra.* In that case this Court said:

> "We can give, therefore, no particular weight or influence to the consideration that the injury in the present case originated from the negligence of the servants of the respondents on board of a vessel, except as evidence that it originated on navigable waters—the Chicago river; and, as we have seen, the simple fact that it originated there, but, the whole damage done upon land, the cause of action not being complete on navigable waters, affords no ground for the exercise of the admiralty jurisdiction. The negligence, of itself, furnishes no cause of action; it is damnum absque injuria."

> "The answer is, as already given; the whole, or at least the substantial cause of action, arising out of the wrong, must be complete within the locality upon *which the jurisdiction depends*—on the high seas or navigable waters."

This rule was recognized in *Smith & Son* v. *Taylor, supra,* when this Court said:

> "If the cause of action arose upon the river, the rights of the parties are controlled by maritime law, the case is within the admiralty and maritime jurisdiction, and the application of the Louisiana Compensation Law violated Sec. 2 of Art. 3. But if the cause of action arose upon the land, the state law is applicable."

In *Nogueira* v. *New York, N. H. & H. R. Co.*, 281 U. S. 134, 74 L. Ed. 759, this Court said:

> "In *State Industrial Commission* v. *Nordenholt Corp.* 259 U. S. 263, 66 L. Ed. 933, 25 A. L. R. 1013, 42 Sup. Ct. Rep. 473, 21 N. C. C. A. 862, a longshoreman was injured on a dock while engaged in unloading a vessel. It was decided that in such a case, where the injury took place on an extension of the land, the maritime law did not prescribe the liability and the local law had always governed. The Workmen's Compensation Law of the State was accordingly held to be applicable. The distinction was thus maintained between injuries on land and those which were suffered by persons engaged in maritime employment on a vessel in navigable waters."

In 1 R. C. L., page 417, the rule announced in the foregoing cases is stated as follows:

> "In determining whether a tort was committed on land or on water, consideration must be given to the place where the injury and damage arise rather than to the place where the negligent act was committed or had its inception."

The Michigan Supreme Court has itself announced and followed this rule in a case it now ignores—*Gordon* v. *Drake*, 193 Mich. 70. There the plaintiff was injured while attempting to scramble from a distressed vessel on navigable water to a wharf. The jurisdictional facts in that case simply cannot be distinguished from those found in the instant case, they having been thus related by the same court:

> "And it was the claim that, while the plaintiff was acting in obedience to the orders and command of the said pilot the said plaintiff was violently thrown against said pier with great force, and crushed between the said boat and pier by means whereof the plaintiff was

greatly hurt, injured, bruised, and wounded. There was evidence tending to support these allegations."

After careful review of applicable authority, including *The Plymouth, supra,* the Michigan Supreme Court thus declared the rule petitioner relies upon:

"The trend of the authorities seems to be to the effect that if the injury complained of happened on land, it is not cognizable in admiralty, even though it may have originated on the water. This springs from the well-known principle that there are two essential ingredients to a cause of action, viz., a wrong, and damage resulting from that wrong. Both must concur. To constitute a maritime cause of action, therefore, not only the wrong must originate on water, but the damage—the other necessary ingredient—must also happen on water. The injury in the instant case happened on the land."

We respectfully request that this Court note the identity of jurisdictional injury that exists between the above case and the instant case. The plaintiff in each case received his initial and jurisdictional injury by having been precipitated against a wharf from a vessel floating on navigable water.

Our search for cases paralleling the instant case on facts has located but one which might be said to oppose our position. We refer to *The Strabo,* 98 Fed. 998, where the libelant, while attempting to leave a vessel by means of a ladder joining the vessel and an adjacent wharf, was injured by falling upon the wharf. The court in that case, referring to language contained in *The Plymouth, supra,* said:

"The language employed in the Plymouth decision, and which was applicable to the circumstances of that case, does not justify such a conclusion. In this case it is highly probable that the libelant sustained some damage from nervous shock while precipitated through

> the air, and before he fell upon the wharf. A person of sensitive nervous organization would, without doubt receive such an injury; the injury commenced when, by the slipping of the ladder, the libelant was thrown into the air."

We submit that the reasoning of *The Strabo* is highly nebulous; likewise that its opposition to recognized authority enjoys but little judicial support. To find it "highly probable" that a person sustains "damage from nervous shock while precipitated through the air" gives but feeble support to a claim that "the substantial cause of action" is "complete within the locality upon which the jurisdiction depends." In *The Strabo* as well as in the instant case actionable injury was not inevitable because of what happened on shipboard. Resulting injury in each case depended upon the height of the fall, upon the force of the contact with the wharf, upon the nature of the surface of the wharf at the point of contact therewith, and particularly upon the position of each man at the time of such contact. Thus it may fairly be declared that the cause of action in each instance had not arisen and was not complete within the meaning of *The Plymouth, supra,* until contact with the land had actually taken place. By the same token petitioner's contact with the sling of bales did not take effect injuriously on shipboard, and the only injury resulting from that contact was a non-maritime one. These considerations, we submit, decisively show error on the part of the Michigan Supreme Court in its ruling that the contact between petitioner and the sling "took effect" within the meaning of that expression as used in *Smith & Son* v. *Taylor, supra.*

The reasoning set forth in *The Strabo* has, we believe, been decisively repudiated by this Court. We refer to this Court's reversal (286 U. S. 528-529, 76 L. Ed. 1270) of *L'Hote* v. *Crowell,* 54 F. (2) 212. In the last cited case the Circuit Court of Appeals, on authority of *The Strabo*

and a kindred case, held compensable under the Longshoremen's and Harbor Workers' Compensation Act an injury arising out of the following circumstances:

> "In loading the ship, Richard Payne (a longshoreman) had been working on the wharf, putting bales of burlap in a sling which was raised from the wharf by means of the ship's tackle and then lowered into the hold. He had been ordered to go on board to assist in closing the ship's hatches when all the bags had been removed from the wharf; and in carrying out that order he rode the last load up from the wharf. As the sling was swinging backward and forward, it struck against either the rail or the side of the ship, with the result that Richard Payne was knocked off the load back on the wharf and fatally injured."

In reversing this decision of the Circuit Court of Appeals this Court cited *Crowell* v. *Benson,* 285 U. S. 22, 76 L. Ed. 598, where it was pointed out with reference to the jurisdictional requirements of the Longshoremen's and Harbor Workers' Compensation Act:

> "These fundamental requirements are that the injury occurs upon the navigable waters of the United States and that the relation of master and servant exists. These conditions are indispensable to the application of the statute, not only because the Congress has so provided explicitly (Sec. 3), but also because the power of the Congress to enact the legislation turns upon the existence of these conditions.
>
> "In amending and revising the maritime law, the Congress cannot reach beyond the constitutional limits which are inherent in the admiralty and maritime jurisdiction. Unless the injuries to which the Act relates occur upon the navigable waters of the United States, they fall outside that jurisdiction."

This Court's reversal of *L'Hote* v. *Crowell, supra,* is, we submit, a final determination that a longshoreman, engaged

in maritime employment, who is precipitated from a vessel or instrumentality of a vessel to a wharf and there injured, has no maritime remedy.

By way of conclusion and for the purpose of giving full clarity to his argument petitioner concedes that any substantial injury to him, caused immediately by his contact with the sling of paper bales before he came in contact with the wharf, would have given rise to a maritime cause of action in his favor to the complete exclusion of local jurisdiction, regardless of whether he sustained additional injuries by striking the wharf. But the finding of the Michigan Supreme Court decisively negatives any such thought, and definitely determines that petitioner's injuries resulting from the untoward events on shipboard were sustained exclusively on land.

Conclusion.

A necessary conclusion from the facts as found in this case is, under the repeated decisions of this Court, that petitioner had no cause of action until *he* struck the wharf. If a firemen's net had been stretched over the wharf petitioner would have fallen harmlessly into it and would have possessed no cause of action, maritime or otherwise. Likewise if petitioner had been able to land on his feet or hands, or both, he probably, or at least possibly, would not have been actionably injured. Thus the negligence of the vessel's crew in permitting the sling to precipitate petitioner from the deck of the vessel was *damnum absque injuria* of itself, and a non-maritime injury became necessary to complete a cause of action based upon such negligence. When petitioner was injured as the result of such negligence he was completely without the jurisdiction of the maritime. We accordingly submit that the ruling of the Supreme Court of Michigan to the effect that petitioner's only remedy is maritime in nature, is patently erroneous.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that petitioner's immunity from improper construction of the Constitution and laws of the United States be not denied him, and that to such end a writ of certiorari should be granted in order that this Court may review the judgment of the Michigan Supreme Court and finally reverse it.

Respectfully submitted,

JESSE P. WOLCOTT,
Counsel for Petitioner.

Business address: 1222 House Office Building, Washington, D. C.

SHIRLEY STEWART,
EUGENE F. BLACK,
Counsel for Petitioner.

Business address: 408-9 First National Bank Bldg., Port Huron, Michigan.

FILE COPY

Office Supreme Court, U. S.
FILED
MAR 6 1935
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 678

EMERSON F. MINNIE,

Petitioner,

vs.

PORT HURON TERMINAL COMPANY AND FIDELITY AND CASUALTY COMPANY OF NEW YORK,

Respondents.

SUPPLEMENTAL BRIEF SUPPORTING PETITION FOR WRIT OF CERTIORARI.

Believing we have failed to fully present a point set forth on page 6 of petitioner's original brief, we respectfully request consideration of this supplemental brief which we address to the same point.

ARGUMENT.

It is undoubtedly true that, if the present judgment of the Michigan Supreme Court is not reversed or set aside, petitioner can proceed under Federal maritime laws against respondent Terminal Company, and that in any such action respondent Terminal Company would be estopped because

of its having pleaded the opposite in the State courts to assert or claim that petitioner's injuries were not sustained within maritime jurisdiction. But, assuming that the present judgment of the Michigan Supreme Court is permitted to stand, petitioner must nevertheless meet in the maritime courts a jurisdictional defense that his injuries were sustained on land. We say this because the only adequate remedy open to petitioner within maritime jurisdiction is against the steamship "Laurendoc" or its owners instead of respondent Terminal Company. Our reasons for this statement are as follows:

Petitioner has no adequate remedy against respondent Terminal Company under the Longshoremen's & Harbor Workers' Compensation Act because, as shown by the official records of the United States Employees' Compensation Commission, respondent Terminal Company did not qualify with insurance under that Act until October 21, 1933. Thus, if petitioner were to proceed against respondent Terminal Company as authorized by the Longshoremen's Act, either for damages or for an award of compensation, he would necessarily have to collect his judgment or award from it, and not from an insurer. Without asserting because it is not of record the uncollectibility of a judgment or award against respondent Terminal Company under the Longshoremen's Act, we ask this Court to consider that possibility in determining whether the prayed for writ is to be issued.

With these considerations in mind, we submit that any action petitioner might bring in the admiralty courts against the steamship or its owners would rightfully be defeated on the facts as they appear in this case on the ground that petitioner was injured without the jurisdiction of the maritime. This being so, petitioner again respectfully reiterates his contention that he may lose all remedy for his injuries if the present judgment of the Michigan

Supreme Court is not reversed and set aside, and that the Michigan Supreme Court has decided a reviewable Federal question in a way not in accord with the clear and definite decisions of this court, notably *L'Hote* v. *Crowell*, 286 U. S. 528, 529, 76 L. Ed. 1270.

Respectfully submitted,

JESSE P. WOLCOTT,
Counsel for Petitioner.

Business address: 1222 House Office Bldg., Washington, D. C.

SHIRLEY STEWART,
EUGENE F. BLACK,
Counsel for Petitioner,

Business address: 408-9 First Nat'l Bank Bldg., Port Huron, Mich.

(6047-C)

20

FILE COPY

FILED
APR 11 1935
CHARLES ELMORE CROPLEY
CLERK

In The

Supreme Court of the United States

October Term, 1934.

No. 678.

EMERSON F. MINNIE, *Petitioner,*

v.

PORT HURON TERMINAL COMPANY AND FIDELITY AND CASUALTY COMPANY OF NEW YORK, *Respondents.*

BRIEF FOR PORT HURON TERMINAL COMPANY AND FIDELITY AND CASUALTY COMPANY.

LEO J. CARRIGAN,
JOHN T. DANIELL,
Counsel for Respondents.

NATIONAL LAW PRINTING CORPORATION, 4422-29 Field Avenue, Detroit, Michigan
WHITTIER 7117

SUBJECT INDEX.

	Page
Argument	4-8
A. Maritime employment	4
B. Employment in foreign commerce	7
Conclusion	9
Statement of facts	2
Statement of questions involved	3
A. Maritime employment	3
B. Employment in foreign commerce	3

Table of Cases Cited.

Atlantic Transport Company v. Imbrovek, 234 U. S. 52	4
Chlentis v. Luckenbach S. S. Company, 247 U. S. 372	4
Clyde S. S. Company v. Walker, 244 U. S. 265	4
Crowell v. Benson, 285 U. S. 22	4
Knickerbocker Ice Company v. Stewart, 253 U. S. 149	4
Peters v. Veasay, 251 U. S. 121	4
Smith & Son v. Taylor, 276 U. S. 179	4
Southern Pacific v. Jensen, 244 U. S. 205	4
Washington v. Dawson, 264 U. S. 219	4

Other Authorities Cited.

Michigan Workmen's Compensation Act, Sec. 8481, Michigan Compiled Laws 1929	7
U. S. Merchant Marine Act, Sec. 883	7
U. S. Merchant Marine Act, 883 proviso	7

In The

Supreme Court of the United States

October Term, 1934.

No. 678.

EMERSON F. MINNIE, *Petitioner,*

v.

PORT HURON TERMINAL COMPANY AND FIDELITY AND CASUALTY COMPANY OF NEW YORK, *Respondents.*

BRIEF FOR PORT HURON TERMINAL COMPANY AND FIDELITY AND CASUALTY COMPANY.

While petitioner filed a brief in support of his petition for writ of certiorari no brief has been filed on his behalf since the granting of said writ. In view of this we feel it is necessary to make a concise statement of the facts and questions involved.

STATEMENT OF FACTS.

(Figures in parentheses refer to pages of printed record, except as the context clearly indicates otherwise.)

Petitioner was employed by respondent, Port Huron Terminal Company, as a longshoreman to assist in the unloading of the Steamer Laurendoch (13, 14, 19, 21) which boat at the time of petitioner's injury was anchored at the dock of said respondent in the St. Clair River at Port Huron, Michigan (19).

The Laurendoch was a boat of Canadian registry and owned by the Patterson Steamship Company of Fort William, Ont. (19, 20, 21), from which point it had come to Port Huron loaded with a cargo of baled paper pulp (19, 20, 21).

Petitioner was assigned to work with the hatchmen on the boat in front of No. 6 hatch on the aft end of the boat (14, 20). On July 11, 1933, while he was signaling a hoist on the boat, a swinging cable on the boat bearing four bales of paper struck him in the back and knocked him from the boat to the dock (13, 15, 20). He sustained injuries as a result of being struck by that part of the cargo then being unloaded (26, 28). Petitioner filed claim for compensation under the Michigan Workmen's Compensation Act but the Supreme Court of Michigan held that inasmuch as his work was of a maritime nature and inasmuch as he was located on navigable waters at the time he was injured that he was not entitled to an award of compensation under the Michigan Workmen's Compensation Act.

STATEMENT OF QUESTIONS INVOLVED.

1. Was the petitioner injured while engaged in a maritime employment upon navigable waters?

2. Was the petitioner engaged in foreign commerce?

ARGUMENT.

1. Was the petitioner injured while engaged in maritime employment on navigable waters?

The undisputed facts clearly indicate that the petitioner *at the time he was injured* was working in a maritime employment on navigable waters and not on the dock. Petitioner was doing the work of a stevedore or longshoreman and, as this court has repeatedly held, such work is maritime in nature. Therefore, the liability in connection with an injury sustained while doing such work is subject to the jurisdiction of the Federal law and not subject to the jurisdiction of the Department of Labor and Industry of the State of Michigan.

Crowell v. Benson, 285 U. S. 22;
Smith & Son v. Taylor, 276 U. S. 179;
Washington v. Dawson, 264 U. S. 219;
Knickerbocker Ice Company v. Stewart, 253 U. S. 149;
Peters v. Veasay, 251 U. S. 121;
Chlentis v. Luckenbach S. S. Company, 247 U. S. 372;
Clyde S. S. Company v. Walker, 244 U. S. 265;
Southern Pacific v. Jensen, 244 U. S. 205;
Atlantic Transport Company v. Imbrovek, 234 U. S. 52.

We will not burden the court with any extended discussion of these decisions. There is no question from the facts in this case that the petitioner here entered into a contract to perform a maritime employment. The undisputed evidence shows that he was hired to assist in the unloading of the Laurendoch and that he was

working *on the boat.* From the standpoint of the contract the Federal jurisdiction in admiralty must control.

The petitioner was struck by a cable on the boat *while he was working on the boat* and from the standpoint of tort, the petitioner being situated upon navigable waters at the time, the Federal jurisdiction in admiralty must control.

The petitioner in his brief in support of his petition for writ of certiorari bases his argument upon the assumption that the injury and damages were entirely sustained upon the dock. The record in this case does not bear out such assumption.

"Q. While you were so working, did you suffer an injury?

A. Yes, sir.

Q. What was that injury?

A. Back injury.

Q. How did you get it?

A. I was struck on the back with four bales of paper swinging on a cable.

Q. Yes?

A. (Continuing): And it knocked me from the boat onto the dock (14, 15).

* * *

Q. Now, where were you standing—or working, rather?

A. Well, the boat has six hatches, and I was working on the—at the time I was injured I was working on the front end of No. 6 hatching. That would be on the aft end of the boat" (20).

The record does not disclose the effect upon the petitioner of the blow which he received while on the boat as distinguished from the effect upon the petitioner of striking the dock.

We respectfully submit that it is unnecessary to consider the effect upon the petitioner to determine the question of jurisdiction. Irrespective of the amount of the injury and damages sustained by the petitioner on the boat and on the dock it is our contention that from a legal standpoint the petitioner's *injury* must be held to have been sustained while he was on the boat. Therefore, to determine the question of jurisdiction, basing the determination upon the location of the petitioner when he was injured, it should be held that the Federal law must control as against the State law.

The fact that petitioner struck the dock instead of another part of the boat or the river cannot be used as a basis for determining the question of jurisdiction. Conversely, if an employee otherwise entitled to compensation under the Michigan Compensation Act had been so struck as to be precipitated from the dock or land on to a boat in the river, it could not be reasonably contended that that fact alone would take jurisdiction away from the State of Michigan and place the case within the admiralty jurisdiction. This court so held in the case of *Crowell v. Benson, supra.*

We respectfully submit that jurisdiction must be determined by the location of the petitioner at the exact time of the injury. Any other test, such as petitioner's location resulting from the injury, would lead to confusion, and [illegible] not the test laid down in the decisions of this court.

2. Was the plaintiff injured while engaged in foreign commerce?

The Michigan Workmen's Compensation Act provides (Section 8481, Michigan Compiled Laws of 1929):

> "The provisions of this act shall apply to employers and workmen engaged in intra-state commerce, and also to those engaged in interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the Congress of the United States, only to the extent that their mutual connection with intra-state work may and shall be clearly separable and distinguishable from interstate or foreign commerce."

Whether or not the petitioner in this case was at other times engaged in intra-state commerce, it is clear that at the time this accident occurred the plaintiff was engaged in foreign commerce, and therefore the Michigan Workmen's Compensation Act has no application. The petitioner at the time of the accident was assisting in the unloading of a Canadian boat loaded with a cargo consigned to an American port. It is clear, therefore, that he was engaged in foreign commerce.

The United States Merchant Marine Act, Section 861 *et seq.* U. S. Code Ann., Section 883, provides:

> "No merchandise shall be transported by water, or by land and water, on penalty of forfeiture thereof, between ports in the United States, including districts, territories and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States."

Under the rule that a person will be presumed to have complied with the law, in the absence of any evidence to the contrary, there is no room for any inference that the Laurendoch, a Canadian boat, owned by a Canadian Company, the Patterson Steamship Company of Fort William, Canada, was carrying any domestic commerce between Port Huron and some other point within the United States because such carriage would have been in direct violation of the provisions of the Merchant Marine Act above quoted. The proviso added to Section 883 of the U. S. Code above referred to is not applicable because the Interstate Commerce Commission has no jurisdiction of rates over Canadian rail lines and their connecting water facilities unless the rate is applicable to a through route including a United States rail line and a Canadian rail line and the connecting water facilities. In this case the cargo was being unloaded from the Laurendoch into the terminal sheds (14) of the respondent, Port Huron Terminal Company, and was not being transported over any through route including Canadian and United States rail lines. There is no evidence in the record that any United States rail line was in any way connected with the transportation involved.

Therefore, the petitioner being engaged in foreign commerce at the time of the accident, the Michigan Department of Labor and Industry has no jurisdiction of the remedies in connection therewith, jurisdiction of matters of foreign or interstate commerce being committed exclusively to the Federal Government to the exclusion of the State Government.

CONCLUSION.

For the reasons above set forth we respectfully submit that the judgment of the Supreme Court of Michigan should be affirmed, with costs to respondents.

Respectfully submitted,

LEO J. CARRIGAN,
JOHN T. DANIELL,
Counsel for Respondents.

SUPREME COURT OF THE UNITED STATES.

No. 678.—October Term, 1934.

Emerson F. Minnie, Petitioner,
vs.
Port Huron Terminal Company and Fidelity and Casualty Company of New York.

On Writ of Certiorari to the Supreme Court of the State of Michigan.

[June 3, 1935.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Petitioner, a longshoreman, was injured at Port Huron while unloading a vessel lying in navigable water. He was about his work on the deck of the vessel when he was struck by a swinging hoist, lifting cargo from a hatch, and was precipitated upon the wharf. He sought compensation under the compensation act of the State of Michigan. His employer, the Port Huron Terminal Company, contended that the accident occurred upon navigable water and that the state law did not apply. The defense was overruled by the state commission in the view that the injury must have been occasioned by petitioner's fall upon the wharf and hence that the claim was within the state statute, although the injury would not have been received except for the force applied to his person while on the vessel. The Supreme Court of the State vacated the commission's award, holding that the federal law controlled. 269 Mich. 295. Because of an asserted conflict with decisions of this Court, a writ of certiorari was granted. 294 U. S. —.

We have held that the case of an employee injured upon navigable waters while engaged in a maritime service is governed by the maritime law. *Southern Pacific Company* v. *Jensen*, 244 U. S. 205; *Grant Smith-Porter Ship Company* v. *Rohde*, 257 U. S. 469, 477. It is otherwise if the injury takes place on land. *State Industrial Commission* v. *Nordenholt Company*, 259 U. S. 263, 272, 273; *Nogueira* v. *N. Y., N. H. & H. R. Co.*, 281 U. S. 128, 133. In the instant case, the injury was due to the blow which petitioner received from the swinging crane. It was that blow received on the vessel in navigable water which gave rise to the cause of action,

and the maritime character of that cause of action is not altered by the fact that the petitioner was thrown from the vessel to the land.

We had the converse case before us in *Smith & Son* v. *Taylor*, 276 U. S. 179. There a longshoreman, employed in the unloading of a vessel at a dock, was standing upon a stage that rested solely upon the wharf and projected a few feet over the water to or near the vessel. He was struck by a sling loaded with cargo, which was being lowered over the vessel's side and was knocked into the water, where sometime later he was found dead. It was urged that the suit was solely for the death which occurred in the water, and hence that the case was exclusively within the admiralty jurisdiction. We held the argument to be untenable. We said: "The blow by the sling was what gave rise to the cause of action. It was given and took effect while deceased was upon the land. It was the sole, immediate and proximate cause of his death. *The G. R. Booth*, 171 U. S. 450, 460. The substance and consummation of the occurrence which gave rise to the cause of action took place on land". *Id.*, p. 182.

If, when the blow from a swinging crane knocks a longshoreman from the dock into the water, the cause of action arises on the land, it must follow, upon the same reasoning, that when he is struck upon the vessel and the blow throws him upon the dock the cause of action arises on the vessel. Compare *Vancouver S. S. Co* v. *Rice*, 288 U. S. 445, 448.

The decision in *L'Hote* v. *Crowell*, 286 U. S. 528, upon which petitioner relies, is not opposed. In that case, we dealt only with the determination of the question of the dependency of a claimant for compensation, holding that the finding of fact by the deputy commissioner against the claimant upon that issue should not have been disturbed. The writ of certiorari was limited to that question. 54 F. (2d) 212; 285 U. S. 533. The judgment is affirmed.

Judgment affirmed.